

United States District Court  
Northern District of California

READIFY, Pty Ltd., and Australian  
Corporation,

Plaintiff,

v.

READIFYBLOG, an individual,

Defendant.

Case No.: CV 12-05357 KAW

ORDER GRANTING PLAINTIFF'S  
EX PARTE APPLICATION FOR  
LEAVE TO ENGAGE IN ADDITIONAL  
LIMITED THIRD PARTY EXPEDITED  
DISCOVERY

**I. BACKGROUND**

Plaintiff Readify, Pty Ltd., an Australian corporation, filed this action on October 17, 2012 asserting claims for defamation and tortious interference with prospective economic advantage. (*See* Compl., Dkt. No. 1., ¶ 4)

The Court is alleged to have subject matter jurisdiction pursuant to 28 U.S.C. § 1332(a) over the parties, as Plaintiff is a foreign corporation. (*Id.* at ¶ 9.) Venue is proper as the blog hosting service Automattic, Inc. (d/b/a Wordpress.com) is located within the Northern District of California. (*Id.* at ¶ 8.)

Plaintiff alleges that Defendant “Readifyblog” is a blog (previously located at [www.readifyblog.wordpress.com](http://www.readifyblog.wordpress.com)) being operated by an unknown individual who used the website to damage Plaintiff's reputation. (Compl., ¶¶ 13-17.) On December 24, 2012, Plaintiff submitted an *ex parte* application for leave to engage in limited discovery requesting that the Court allow it to serve a subpoena on Automattic, Inc., to obtain “Readifyblog’s” user information, so that it could complete service of process and substitute the name of the individual for user “Readifyblog.” (Dkt. No. 8.) On December 28, 2012, the Court granted that request. (Dkt. No. 9.)

On March 29, 2013, Plaintiff filed an *ex parte* application to engage in additional limited discovery and to continue the case management conference scheduled for April 2, 2013. (Dkt. No.

11.) At the Court's request, Plaintiff filed a separate request to continue the CMC, which was granted. (Dkt. Nos. 12-13.) As a result, Plaintiff's request to continue the CMC in connection with this *ex parte* application is moot.

In the application presently before the Court, Plaintiff seeks identifying information from "Readifyblog's" Hotmail email address ("romeo\_au@hotmail.com"), which it obtained by subpoena from Automattic, Inc. in connection with the earlier *ex parte* application. Hotmail is owned and operated by Microsoft, Inc.

As discussed below, Plaintiff has previously demonstrated that: (1) the Doe defendant is a real person who may be generally sued in federal court; (2) it has attempted unsuccessfully to identify the Doe defendant prior to filing this motion; (3) its defamation claims against Doe could survive a motion to dismiss; and (4) there is a reasonable likelihood the service of the proposed subpoena would lead to information identifying Doe. The Court therefore finds that good cause exists to allow Plaintiff to engage in this additional, preliminary discovery. Accordingly, the Court GRANTS Plaintiff's motion as specifically stated below.

## II. DISCUSSION

### A. Legal Standard

A court may authorize early discovery before the Rule 26(f) conference for the parties' and witnesses' convenience and in the interest of justice. Fed. R. Civ. P. 26(d); Civil L.R. 7-10 (2012). Courts within the Ninth Circuit generally consider whether a plaintiff has shown "good cause" for the early discovery. *See, e.g., IO Group, Inc. v. Does 1-65*, No. C 10-4377 SC, 2010 WL 4055667, at \*2 (N.D. Cal. Oct. 15, 2010). When the identity of a defendant is unknown before the complaint is filed, a plaintiff "should be given an opportunity through discovery to identify the unknown defendants unless it is clear that discovery would not uncover the identities, or that the complaint would be dismissed on other grounds." *Gillespie v. Civiletti*, 629 F.2d 637, 642 (9th Cir. 1980).

In evaluating whether a plaintiff establishes good cause for attempting to learn the identity of Doe defendants through early discovery, courts examine whether plaintiff (1) has identified the Doe defendants with sufficient specificity that the court can determine that the defendants are real

people who can be sued in federal court, (2) has recounted the steps it has taken to locate and identify the defendant, (3) has demonstrated that the action can withstand a motion to dismiss, and (4) has proved that the discovery is likely to lead to identifying information that will permit service of process. *Columbia Ins. v. seescandy.com*, 185 F.R.D. 573, 578-80 (N.D. Cal. 1999).

### **B. Plaintiff has Shown Good Cause to Permit Early Discovery**

As provided in the earlier order granting Plaintiff's application for *ex parte* limited discovery, Plaintiff has already made a sufficient showing under each of the four factors listed above to establish good cause to permit it to engage in early discovery to identify Defendant "Readifyblog." (*See* Dkt. No. 9.) Since this is simply a request to conduct further discovery related to the identifying email address obtained by the subpoena on Automattic, Inc., the Court incorporates its earlier analysis by reference and will limit its discussion to the fourth factor.

As to the fourth factor, Plaintiff has demonstrated that the proposed subpoena seeks information likely to lead to the identifying information necessary for it to effect service of process on Defendant. Specifically, the proposed subpoena requests the identifying information connected to Defendant's "Hotmail" email account, as Microsoft requires more personal information than Automattic, Inc. at the time of account creation. (*Ex Parte App.*, Dkt. No. 11, ¶ 4.) This discovery is likely to lead to identifying information, specifically first and last name, physical address, telephone number, alternate email address, and IP address, and any other account information that Defendant may have provided. (*Id.*, ¶¶ 4-6.)

In light of the above, the Court finds good cause to grant Plaintiff leave to conduct additional limited discovery to obtain the registration information from Microsoft, Inc.'s Hotmail email service for the email account "romeo\_au@hotmail.com." Further, the Court finds that permitting Plaintiff to continue to engage in limited, early discovery is consistent with Rule 26(d), as it furthers the interest of justice and poses little, if any, inconvenience to the subpoena recipients.

### **III. CONCLUSION**

For the reasons set forth above, the Court GRANTS Plaintiff's *Ex Parte* Application for Leave to Take Additional Expedited Discovery as follows:

*Kandis Westmore*  
KANDIS A. WESTMORE  
United States Magistrate Judge